

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CELLCO PARTNERSHIP
d/b/a VERIZON WIRELESS

and

Case 28-CA-145221

SARA PARRISH

CORRECTED NOTICE TO SHOW CAUSE

In a February 24, 2017 Decision and Order, the National Labor Relations Board affirmed in part and reversed in part Administrative Law Judge Mary Miller Cracraft's findings that the Respondent violated Section 8(a)(1) of the Act by maintaining certain work rules in its 2014 and 2015 Code of Conduct. *Cellco Partnership d/b/a Verizon Wireless*, 365 NLRB No. 38 (2017).¹ The Board applied the "reasonably construe" prong of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). *Id.*, slip op. at 1 fn. 3.² In analyzing some complaint allegations, the Board also applied the standard for determining the lawfulness of an employer's rule restricting employee use of a company's email system set forth in *Purple Communications, Inc.*, 361 NLRB 1050 (2014). *Id.*³

¹ On April 21, 2017, the Board issued an Order Denying Motions for Reconsideration of the Decision and Order.

² Under the "reasonably construe" prong, an employer's maintenance of a facially neutral work rule would be unlawful "if employees would reasonably construe the language to prohibit Section 7 activity." *Lutheran Heritage Village-Livonia*, 343 NLRB at 647.

³ On August 1, 2018, the Board invited briefing regarding, among other things, whether the Board should adhere to, modify, or overrule *Purple Communications*. Notice and Invitation to File Briefs, *Caesars Entertainment Corp. d/b/a Rio All-Suites Hotel & Casino*, 28-CA-060841, 2018 WL 3703476 (Aug. 1, 2018).

On March 6, 2017, the Charging Party petitioned for review of the Decision and Order with the United States Court of Appeals for the Ninth Circuit, and the Respondent petitioned for review with the United States Court of Appeals for the District of Columbia Circuit. On May 22, 2017, the U.S. Judicial Panel on Multidistrict Litigation randomly selected the Ninth Circuit as the court to review the case. On May 30, 2017, the Board filed a cross-petition for enforcement with the Ninth Circuit.

While those petitions were pending, the Board overruled the “reasonably construe” prong of *Lutheran Heritage Village-Livonia* and announced a new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154, slip op. at 14-17 (2017). On September 7, 2018, the Ninth Circuit granted the Board’s motion to sever and remand the issues in the Charging Party’s petition for review in full and all but one issue in the Respondent’s petition for review and the Board’s cross-petition for enforcement for reconsideration in light of *Boeing*. The Ninth Circuit retained the issue as to whether the Respondent violated Section 8(a)(1) by promulgating a rule governing employee solicitation and fundraising that explicitly restricted use of company resources, including email and instant messaging, because the Board relied solely on *Purple Communications* and not on any part of *Lutheran Heritage* that was overruled by *Boeing*.

On October 29, 2018, the Ninth Circuit issued mandate in the case arising from the Charging Party’s petition for review. On November 5, the Board filed a motion for the Ninth Circuit to issue mandate with respect to the issues remanded from the Respondent’s petition for review and the Board’s cross-petition for enforcement. On June 3, 2019, the Ninth Circuit issued an order stating that mandate is “unnecessary as

proceedings in these petitions remain ongoing” because of the issue in the Respondent’s petition for review and the Board’s cross-petition for enforcement that was not remanded.

Having accepted the remand, the Board hereby issues the following notice to show cause why this proceeding should not be remanded to the judge for further proceedings in light of *Boeing*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision.

NOTICE IS GIVEN that any party seeking to show cause why this case should not be remanded to the administrative law judge must do so in writing, filed with the Board in Washington, D.C., on or before September 13, 2019. (with affidavit of service on the parties to this proceeding). Any response should address whether a remand would affect the Board's ability to resolve issues implicating *Purple Communications*, including whether that portion of the case should be severed and retained or instead included in the remand. Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C., August 30, 2019.

By direction of the Board:

Roxanne Rothschild
Executive Secretary